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Resolution adopted by the General Assembly

[*on the report of the Third Committee (A/57/806)*]

57/228. Khmer Rouge trials

B[1]

The General Assembly,

Recalling its resolution 57/228 of 18 December 2002,

Welcoming the efforts of the Secretary-General and the Royal Government of Cambodia to conclude the negotiation of the draft Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea contained in the annex to the present resolution,

Taking note of the report of the Secretary-General,[2]

1. *Approves* the draft Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea contained in the annex to the present resolution;

2. *Urges* the Secretary-General and the Royal Government of Cambodia to take all the measures necessary to allow the draft Agreement referred to in paragraph 1 to enter into force, and to implement it fully after its entry into force;

3. *Decides* that the expenses of the Extraordinary Chambers to be defrayed by the United Nations in accordance with the relevant provisions of the draft Agreement shall be borne by voluntary contributions from the international community as indicated in paragraph 9 of resolution 57/228, and appeals to the international community to provide assistance, including financial and personnel support to the Extraordinary Chambers;

4. *Requests* the Secretary-General to report to the General Assembly at its fifty-eighth session on the implementation of the present resolution.

85th plenary meeting
13 May 2003

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[1] Consequently, resolution 57/228, in section V of the *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 49* and corrigendum (A/57/49 and A/57/49 (Vol. I)/Corr.1), vol. I, becomes resolution 57/228 A.

[2] A/57/769.

Annex

Draft Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea

Whereas the General Assembly of the United Nations, in its resolution 57/228 of 18 December 2002, recalled that the serious violations of Cambodian and international humanitarian law during the period of Democratic Kampuchea from 1975 to 1979 continue to be matters of vitally important concern to the international community as a whole,

Whereas in the same resolution the General Assembly recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security,

Whereas the Cambodian authorities have requested assistance from the United Nations in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979,

Whereas prior to the negotiation of the present Agreement substantial progress had been made by the Secretary-General of the United Nations (hereinafter, "the Secretary-General") and the Royal Government of Cambodia towards the establishment, with international assistance, of Extraordinary Chambers within the existing court structure of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea,

Whereas by its resolution 57/228, the General Assembly welcomed the promulgation of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea and requested the Secretary-General to resume negotiations, without delay, to conclude an agreement with the Government, based on previous negotiations on the establishment of the Extraordinary Chambers consistent with the provisions of the said resolution, so that the Extraordinary Chambers may begin to function promptly,

Whereas the Secretary-General and the Royal Government of Cambodia have held negotiations on the establishment of the Extraordinary Chambers,

Now therefore the United Nations and the Royal Government of Cambodia have agreed as follows:

Article 1
Purpose

The purpose of the present Agreement is to regulate the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979. The Agreement provides, inter alia, the legal basis and the principles and modalities for such cooperation.

Article 2
The Law on the Establishment of Extraordinary Chambers

1. The present Agreement recognizes that the Extraordinary Chambers have subject-matter jurisdiction consistent with that set forth in "the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea" (hereinafter: "the Law on the Establishment of the Extraordinary Chambers"), as adopted and amended by the Cambodian Legislature under the Constitution of Cambodia. The present Agreement further recognizes that the Extraordinary Chambers have personal jurisdiction over senior leaders of Democratic Kampuchea and those who were most responsible for the crimes referred to in Article 1 of the Agreement.

2. The present Agreement shall be implemented in Cambodia through the Law on the Establishment of the Extraordinary Chambers as adopted and amended. The Vienna Convention on the Law of Treaties, and in particular its Articles 26 and 27, applies to the Agreement.

3. In case amendments to the Law on the Establishment of the Extraordinary Chambers are deemed necessary, such amendments shall always be preceded by consultations between the parties.

Article 3
Judges

1. Cambodian judges, on the one hand, and judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations (hereinafter: "international judges"), on the other hand, shall serve in each of the two Extraordinary Chambers.

2. The composition of the Chambers shall be as follows:

(*a*) The Trial Chamber: three Cambodian judges and two international judges;

(*b*) The Supreme Court Chamber, which shall serve as both appellate chamber and final instance: four Cambodian judges and three international judges.

3. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to judicial offices. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. In the overall composition of the Chambers due account should be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

5. The Secretary-General of the United Nations undertakes to forward a list of not less than seven nominees for international judges from which the Supreme Council of the Magistracy shall appoint five to serve as judges in the two Chambers. Appointment of international judges by the Supreme Council of the Magistracy shall be made only from the list submitted by the Secretary-General.

6. In the event of a vacancy of an international judge, the Supreme Council of the Magistracy shall appoint another international judge from the same list.

7. The judges shall be appointed for the duration of the proceedings.

8. In addition to the international judges sitting in the Chambers and present at every stage of the proceedings, the President of a Chamber may, on a case-by-case basis, designate from the list of nominees submitted by the Secretary-General, one or more alternate judges to be present at each stage of the proceedings, and to replace an international judge if that judge is unable to continue sitting.

Article 4
Decision-making

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:

(*a*) A decision by the Trial Chamber shall require the affirmative vote of at least four judges;

(*b*) A decision by the Supreme Court Chamber shall require the affirmative vote of at least five judges.

2. When there is no unanimity, the decision of the Chamber shall contain the views of the majority and the minority.

Article 5
Investigating judges

1. There shall be one Cambodian and one international investigating judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.

2. The co-investigating judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to such a judicial office.

3. The co-investigating judges shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the investigation is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

4. The co-investigating judges shall cooperate with a view to arriving at a common approach to the investigation. In case the co-investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed unless the judges or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.

5. In addition to the list of nominees provided for in Article 3, paragraph 5, the Secretary-General shall submit a list of two nominees from which the Supreme Council of the Magistracy shall appoint one to serve as an international co-investigating judge, and one as a reserve international co-investigating judge.

6. In case there is a vacancy or a need to fill the post of the international co-investigating judge, the person appointed to fill this post must be the reserve international co-investigating judge.

7. The co-investigating judges shall be appointed for the duration of the proceedings.

Article 6
Prosecutors

1. There shall be one Cambodian prosecutor and one international prosecutor competent to appear in both Chambers, serving as co-prosecutors. They shall be responsible for the conduct of the prosecutions.

2. The co-prosecutors shall be of high moral character, and possess a high level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.

3. The co-prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the prosecution is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

4. The co-prosecutors shall cooperate with a view to arriving at a common approach to the prosecution. In case the prosecutors are unable to agree whether to proceed with a prosecution, the prosecution shall proceed unless the prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.

5. The Secretary-General undertakes to forward a list of two nominees from which the Supreme Council of the Magistracy shall select one international co-prosecutor and one reserve international co-prosecutor.

6. In case there is a vacancy or a need to fill the post of the international co-prosecutor, the person appointed to fill this post must be the reserve international co-prosecutor.

7. The co-prosecutors shall be appointed for the duration of the proceedings.

8. Each co-prosecutor shall have one or more deputy prosecutors to assist him or her with prosecutions before the Chambers. Deputy international prosecutors shall be appointed by the international co-prosecutor from a list provided by the Secretary-General.

Article 7
Settlement of differences between the co-investigating judges or the co-prosecutors

1. In case the co-investigating judges or the co-prosecutors have made a request in accordance with Article 5, paragraph 4, or Article 6, paragraph 4, as the case may be, they shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

2. The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three appointed by the Supreme Council of the Magistracy, with one as President, and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General. Article 3, paragraph 3, shall apply to the judges.

3. Upon receipt of the statements referred to in paragraph 1, the Director of the Office of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.

4. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the co-investigating judges or the co-prosecutors. They shall immediately proceed in accordance with the decision of the Chamber. If there is no majority, as required for a decision, the investigation or prosecution shall proceed.

Article 8
Office of Administration

1. There shall be an Office of Administration to service the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges and the Prosecutors' Office.

2. There shall be a Cambodian Director of this Office, who shall be appointed by the Royal Government of Cambodia. The Director shall be responsible for the overall management of the Office of Administration, except in matters that are subject to United Nations rules and procedures.

3. There shall be an international Deputy Director of the Office of Administration, who shall be appointed by the Secretary-General. The Deputy Director shall be responsible for the recruitment of all international staff and all administration of the international components of the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges, the Prosecutors' Office and the Office of Administration. The United Nations and the Royal Government of Cambodia agree that, when an international Deputy Director has been appointed by the Secretary-General, the assignment of that person to that position by the Royal Government of Cambodia shall take place forthwith.

4. The Director and the Deputy Director shall cooperate in order to ensure an effective and efficient functioning of the administration.

Article 9
Crimes falling within the jurisdiction of the Extraordinary Chambers

The subject-matter jurisdiction of the Extraordinary Chambers shall be the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, crimes against humanity as defined in the 1998 Rome Statute of the International Criminal Court and grave breaches of the 1949 Geneva Conventions and such other crimes as defined in Chapter II of the Law on the Establishment of the Extraordinary Chambers as promulgated on 10 August 2001.

Article 10
Penalties

The maximum penalty for conviction for crimes falling within the jurisdiction of the Extraordinary Chambers shall be life imprisonment.

Article 11
Amnesty

1. The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement.

2. This provision is based upon a declaration by the Royal Government of Cambodia that until now, with regard to matters covered in the law, there has been only one case, dated 14 September 1996, when a pardon was granted to only one person with regard to a 1979 conviction on the charge of genocide. The United Nations and the Royal Government of Cambodia agree that the scope of this pardon is a matter to be decided by the Extraordinary Chambers.

Article 12
Procedure

1. The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.

2. The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party. In the interest of securing a fair and public hearing and credibility of the procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers. Any exclusion from such proceedings in accordance with the provisions of Article 14 of the Covenant shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice.

Article 13
Rights of the accused

1. The rights of the accused enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing; to be presumed innocent until proved guilty; to engage a counsel of his or her choice; to have adequate time and facilities for the preparation of his or her defence; to have counsel provided if he or she does not have sufficient means to pay for it; and to examine or have examined the witnesses against him or her.

2. The United Nations and the Royal Government of Cambodia agree that the provisions on the right to defence counsel in the Law on the Establishment of Extraordinary Chambers mean that the accused has the right to engage counsel of his or her own choosing as guaranteed by the International Covenant on Civil and Political Rights.

Article 14
Premises

The Royal Government of Cambodia shall provide at its expense the premises for the co-investigating judges, the Prosecutors' Office, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration. It shall also provide for such utilities, facilities and other services necessary for their operation that may be mutually agreed upon by separate agreement between the United Nations and the Government.

Article 15
Cambodian personnel

Salaries and emoluments of Cambodian judges and other Cambodian personnel shall be defrayed by the Royal Government of Cambodia.

Article 16
International personnel

Salaries and emoluments of international judges, the international co-investigating judge, the international co-prosecutor and other personnel recruited by the United Nations shall be defrayed by the United Nations.

Article 17
Financial and other assistance of the United Nations

The United Nations shall be responsible for the following:

(*a*) Remuneration of the international judges, the international co-investigating judge, the international co-prosecutor, the Deputy Director of the Office of Administration and other international personnel;

(*b*) Costs for utilities and services as agreed separately between the United Nations and the Royal Government of Cambodia;

(*c*) Remuneration of defence counsel;

(*d*) Witnesses' travel from within Cambodia and from abroad;

(*e*) Safety and security arrangements as agreed separately between the United Nations and the Government;

(*f*) Such other limited assistance as may be necessary to ensure the smooth functioning of the investigation, the prosecution and the Extraordinary Chambers.

Article 18
Inviolability of archives and documents

The archives of the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration, and in general all documents and materials made available, belonging to or used by them, wherever located in Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

Article 19
Privileges and immunities of international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration

1. The international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

(*a*) Personal inviolability, including immunity from arrest or detention;

(*b*) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

(*c*) Inviolability for all papers and documents;

(*d*) Exemption from immigration restrictions and alien registration;

(*e*) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. The international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration shall enjoy exemption from taxation in Cambodia on their salaries, emoluments and allowances.

Article 20
Privileges and immunities of Cambodian and international personnel

1. Cambodian judges, the Cambodian co-investigating judge, the Cambodian co-prosecutor and other Cambodian personnel shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement. Such immunity shall continue to be accorded after termination of employment with the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.

2. International personnel shall be accorded:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement. Such immunity shall continue to be accorded after termination of employment with the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration;

(*b*) Immunity from taxation on salaries, allowances and emoluments paid to them by the United Nations;

(*c*) Immunity from immigration restrictions;

(*d*) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.

3. The United Nations and the Royal Government of Cambodia agree that the immunity granted by the Law on the Establishment of the Extraordinary Chambers in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement will apply also after the persons have left the service of the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.

Article 21
Counsel

1. The counsel of a suspect or an accused who has been admitted as such by the Extraordinary Chambers shall not be subjected by the Royal Government of Cambodia to any measure which may affect the free and independent exercise of his or her functions under the present Agreement.

2. In particular, the counsel shall be accorded:

(*a*) Immunity from personal arrest or detention and from seizure of personal baggage;

(*b*) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(*c*) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed by them in their official capacity as counsel. Such immunity shall continue to be accorded to them after termination of their functions as a counsel of a suspect or accused.

3. Any counsel, whether of Cambodian or non-Cambodian nationality, engaged by or assigned to a suspect or an accused shall, in the defence of his or her client, act in accordance with the present Agreement, the Cambodian Law on the Statutes of the Bar and recognized standards and ethics of the legal profession.

Article 22
Witnesses and experts

Witnesses and experts appearing on a summons or a request of the judges, the co-investigating judges, or the co-prosecutors shall not be prosecuted, detained or subjected to any other restriction on their liberty by the Cambodian authorities. They shall not be subjected by the authorities to any measure which may affect the free and independent exercise of their functions.

Article 23
Protection of victims and witnesses

The co-investigating judges, the co-prosecutors and the Extraordinary Chambers shall provide for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the identity of a victim or witness.

Article 24
Security, safety and protection of persons referred to in the present Agreement

The Royal Government of Cambodia shall take all effective and adequate actions which may be required to ensure the security, safety and protection of persons referred to in the present Agreement. The United Nations and the Government agree that the Government is responsible for the security of all accused, irrespective of whether they appear voluntarily before the Extraordinary Chambers or whether they are under arrest.

Article 25
Obligation to assist the co-investigating judges, the co-prosecutors and the Extraordinary Chambers

The Royal Government of Cambodia shall comply without undue delay with any request for assistance by the co-investigating judges, the co-prosecutors and the Extraordinary Chambers or an order issued by any of them, including, but not limited to:

(*a*) Identification and location of persons;

(*b*) Service of documents;

(*c*) Arrest or detention of persons;

(*d*) Transfer of an indictee to the Extraordinary Chambers.

Article 26
Languages

1. The official language of the Extraordinary Chambers and the Pre-Trial Chamber is Khmer.

2. The official working languages of the Extraordinary Chambers and the Pre-Trial Chamber shall be Khmer, English and French.

3. Translations of public documents and interpretation at public hearings into Russian may be provided by the Royal Government of Cambodia at its discretion and expense on condition that such services do not hinder the proceedings before the Extraordinary Chambers.

Article 27
Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Extraordinary Chambers, a phased-in approach shall be adopted for their establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Extraordinary Chambers, the judges, the co-investigating judges and the co-prosecutors will be appointed along with investigative and prosecutorial staff, and the process of investigations and prosecutions shall be initiated.

3. The trial process of those already in custody shall proceed simultaneously with the investigation of other persons responsible for crimes falling within the jurisdiction of the Extraordinary Chambers.

4. With the completion of the investigation of persons suspected of having committed the crimes falling within the jurisdiction of the Extraordinary Chambers, arrest warrants shall be issued and submitted to the Royal Government of Cambodia to effectuate the arrest.

5. With the arrest by the Royal Government of Cambodia of indicted persons situated in its territory, the Extraordinary Chambers shall be fully operational, provided that the judges of the Supreme Court Chamber shall serve when seized with a matter. The judges of the Pre-Trial Chamber shall serve only if and when their services are needed.

Article 28
Withdrawal of cooperation

Should the Royal Government of Cambodia change the structure or organization of the Extraordinary Chambers or otherwise cause them to function in a manner that does not conform with the terms of the present Agreement, the United Nations reserves the right to cease to provide assistance, financial or otherwise, pursuant to the present Agreement.

Article 29
Settlement of disputes

Any dispute between the Parties concerning the interpretation or application of the present Agreement shall be settled by negotiation, or by any other mutually agreed upon mode of settlement.

Article 30
Approval

To be binding on the parties, the present Agreement must be approved by the General Assembly of the United Nations and ratified by Cambodia. The Royal Government of Cambodia will make its best endeavours to obtain this ratification by the earliest possible date.

Article 31
Application within Cambodia

The present Agreement shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

Article 32
Entry into force

The present Agreement shall enter into force on the day after both parties have notified each other in writing that the legal requirements for entry into force have been complied with.

Done at [place] on [day, month] 2003 in two copies in the English language.

For the United Nations

For the Royal Government of Cambodia